

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

)
FAIRMOUNT PROPERTIES, LLC,)
) Case No. 5:20-cv-320
Plaintiff,)
) Judge _____
vs.)
) (formerly Case No. 2020CV00018
COLLEGE TOWN KENT, LLC,)
) in the Court of Common Pleas of Portage
) County, Ohio)
Defendant.)
)

DEFENDANT COLLEGE TOWN KENT, LLC'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant College Town Kent, LLC (“Defendant”) hereby gives notice of removal of this action, captioned *Fairmount Properties, LLC v. College Town Kent, LLC*, bearing civil action number 2020CV00018, from the Court of Common Pleas of Portage County, Ohio, to the United States District Court for the Northern District of Ohio, Eastern Division. Pursuant to 28 U.S.C. § 1446(a), Defendant provides the following statement of the grounds for removal:

BACKGROUND

1. On January 9, 2020, Plaintiff Fairmount Properties, LLC (“Plaintiff”), filed a Complaint in the Court of Common Pleas of Portage County, Ohio, designated as Case No. 2020CV00018 on the docket, against Defendant. The Complaint alleges three causes of action: (1) declaratory relief, (2) breach of contract, and (3) tortious interference with contract. A true and accurate copy of the Complaint is attached hereto as Exhibit A.

2. Pursuant to 28 U.S.C. § 1446(a), a true and accurate copy of all process, pleadings, and orders served upon defendants, and all documents filed in the state court action (other than the Complaint), are attached hereto as Exhibit B.

VENUE AND JURISDICTION

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1446(a) because the Court of Common Pleas of Portage County, Ohio, where the Complaint was filed, is a state court within the Northern District of Ohio, Eastern Division.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because (1) there is complete diversity of citizenship between Plaintiff and Defendants; (2) the amount in controversy exceeds \$75,000, exclusive of interests and costs; and (3) all other requirements for removal have been satisfied.

I. THERE IS COMPLETE DIVERSITY OF CITENZENSHIP BETWEEN PLAINTIFF AND DEFENDANT.

5. The parties to this action are both limited liability companies. For purposes of diversity jurisdiction, “a limited liability company has the citizenship of each of its members.” *Delay v. Rosenthal Collins Grp., Inc.*, 585 F.3d 1003, 1005 (6th Cir. 2009). On information and belief, all members of Plaintiff Fairmount Properties, LLC, are citizens of Ohio or of states other than Pennsylvania. *See e.g.*, Ex. C, Fairmount Properties Website (listing four principals, including Randy Ruttenberg, each with Ohio office phone numbers); Ex. D, 9/16/13 Fairmount Properties, LLC, Ohio Secretary of State Subsequent Agent Appointment (signed by member Randy Ruttenberg). The members of Defendant College Town Kent, LLC are Dunlap Family, LLC and BUD Kent, LLC. The sole member of Dunlap Family, LLC is Edward B. Dunlap. The members of BUD Kent, LLC are Edward B. Dunlap and Dunlap Family, LLC. Edward B. Dunlap is a citizen of Pennsylvania. Accordingly, College Town Kent, LLC is a citizen of

Pennsylvania only, while Fairmount Properties, LLC is not a citizen of Pennsylvania. Complete diversity therefore exists.

II. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.

6. “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount in controversy allegations should be accepted when not contested by Plaintiff or questioned by the court.” *Id.* at 553. In determining whether the amount in controversy is satisfied, the Court may consider compensatory and statutory damages, as well as punitive damages. *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 572-73 (6th Cir. 2001). “[W]here a party seeks a declaratory judgment, ‘the amount in controversy is not necessarily the money judgment sought or recovered, but rather the value of the consequences which may result from the litigation.’” *Freeland v. Liberty Mut. Fire Ins. Co.*, 632 F.3d 250, 253 (6th Cir. 2011) (quoting *Lodal, Inc. v. Home Ins. Co. of Ill.*, No. 95-2187, 1998 U.S. App. LEXIS 12841, 1998 WL 393766, at *2 (6th Cir. June 12, 1998)). Here, Plaintiff seeks a declaration that Defendant is obligated to certain third-party vendors for \$360,655.18 in unpaid invoices. (Ex. A, Compl. ¶ 21.) Plaintiff also alleges that, due to Defendant’s alleged breach of contract and tortious interference, Plaintiff has been or will be damaged in the amount of these unpaid invoices. (*Id.* ¶¶ 62, 69.) Therefore, the amount in controversy exceeds the \$75,000 jurisdictional threshold.

III. ALL OTHER REMOVAL REQUIREMENTS ARE SATISFIED.

7. Service on Defendant was made on or after January 15, 2020. See Ex. B, Proof of Service. The last day to file the Notice of Removal is February 14, 2020 at the earliest. 28 U.S.C.

§ 1446(b)(1). Because Defendant filed this Notice of Removal on February 13, 2020, removal is timely.

CONCLUSION

WHEREFORE, Defendant hereby removes this action from the Court of Common Pleas of Portage County to the United States District Court for the Northern District of Ohio, Eastern Division. By filing this Notice of Removal, Defendant does not waive any defense that may be available to it and reserves all such defenses. If any question arises as to the propriety of the removal to this Court, Defendant requests the opportunity to present a brief and oral argument in support of its position that this case has been properly removed.

Respectfully submitted,

/s/ Tyler Tarney

Tyler Tarney (0089082)
Joseph Merical (0098263)

GORDON REES SCULLY MANSUKHANI LLP

41 South High Street, Suite 2495
Columbus, Ohio 43215

T: (614) 340-5558/F: (614) 360-2130

ttarney@grsm.com

jmerical@grsm.com

Attorneys for Defendant College Town Kent, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the U.S. District Court in the Northern District of Ohio (Akron) on February 13, 2020, and served upon all parties who have appeared in this matter and registered with ECF via the Court's electronic filing system. A copy will also be served via electronic mail upon the following:

Chad D. Cooper (0074322)
Ashtyn N. Saltz (0089548)
ULMER & BERNE LLP
1660 West 2nd Street, Suite 1100
Cleveland, OH 44113
T: (216) 583-7000/F: (216) 583-7379

ccooper@ulmer.com
asaltz@ulmer.com

Attorney for Plaintiff Fairmount Properties, LLC

/s/ Tyler Tarney

Tyler Tarney (0089082)
Joseph Merical (0098263)